THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

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W.P.No.19366 of 1994

Dt.06-03-2006

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Between:

1.Velakaturi Gurappa Naidu and others.

..Petitioners

and

Sub Collector, Chandragiri at Tirupathi.

..Respondent

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W.P.No.19366 of 1994

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ORAL ORDER:

The proceedings issued by the District Collector in Roc.No.B4/6183/93 dated 28-09-1994 directing the Mandal Revenue Officer, Pakala to delete the lands mentioned in Sy.No.1832/1 to an extent of Ac.15.24 cts. from the Prohibitory Order Book of Pakala village and take necessary action for assignment of the land to the (SC) poor families of Mallelacheruvu Harijanawada is the subject matter of challenge in the present writ petition by the villagers.

The facts which are necessary for disposal of the writ petition are that a large track to an extent of Ac.217.13 cts. has been classified as grazing poramboke and used by the villagers for the grazing purposes of Mallelacheruvu and surrounding five villages, namely Kothavenkatapuram, Kothur, Vootuvanka, Bandarlapalli and Ayyappagarripalli. There are guntas in the said land, which are used for the drinking purpose and apart from the same there are three wells in the said land. Out of which, an extent of Ac.35.87 cts. found fit for cultivation on the personal inspection by the Joint Collector, Chittoor, which are classified as A.W.D. and Gayalu as per the village accounts and the same was permitted to be deleted from the Prohibition Order Book for eventual assignment to landless poor scheduled caste people of Mallelacheruvupalle H.W. leaving the balance of Ac.184.39 cts. for grazing purpose to the cattle of the villagers. The Joint Collector on his personal inspection in Sy.No.2869/2 an extent of Ac.5.32 cts., which is classified as A.W.D. of Pakala village, has been deleted from Prohibition Order Book as the land is fit for cultivation. While so, some of the villagers filed O.S.No.36 of 1987 before the District Munsif, Pakala for permanent injunction restraining the defendants therein from preventing or obstructing the plaintiffs and villagers of the above villages from grazing the fields, which was decreed on 25-09-1989 restraining the defendants by way of permanent injunction not to interfere with the right of the villagers of their enjoyment of suit lands except Sy.No.2869/2. Another suit—O.S.No.192 of 1993 came to be filed before the Junior Civil Judge, Pakala for permanent injunction, which was also decreed on 30-01-1999 restraining the defendants, not to interfere with their lands. Later the villagers from the deprived sections of the society, who are mainly depending upon agriculture, made a representation to the R.D.O. requesting to set apart the lands noted against each survey numbers and accordingly Tahsildar, Chandragiri was called upon to inspect the lands, who submitted a report stating that number of villagers requested for converting the above said area into grazing ground

poromboke and major portion of the land is covered by hillocks on all sides and there is only a small extent of Ac.9.67 cts. in Sy.No.2795 though reserved as cattle stand poromboke it is cultivated unauthorisedly in which there are two small ponds catering the needs of the cattle for drinking and the entire area in Sy.No.1832/1 and its surroundings was used for grazing purpose since times immemorial which is classified as Mandabilu Poramboke and Katamraju temple is existing there. Basing upon the report of the Tahsildar the R.D.O. ordered not to allow any cultivation in the above noted survey numbers and also ordered for cancellation of assignment of Ac.5.32 cts. in Sy.No.2800/1 and resumed the same to the Government for the purpose of grazing the cattle. While the matter stood thus, W.P.No.7105 of 1983 came to be filed in which they have obtained injunction restraining the respondents therein from interfering with the lands and the same was vacated in view of injunction order obtained by the petitioners from the civil court. Therefore, villagers moved the revenue authorities for grant of DKT pattas and to take a decision to de-reserve the lands from the Prohibitory Order Book, so that the lands can be assigned to Scheduled Caste People of Mallelacheruvupalli. Basing upon the said representation and the report of the M.R.O. the Collector called upon the Joint Collector to have a personal inspection and who after personal inspection proposed an extent of 32 acres is fit for cultivation and also opined that the lands could be assigned to the SC poor families in the village which lead to issuance of impugned proceedings.

Sri Mehar Chand Noori learned counsel for the petitioners contends that Board Standing Order-15 Para-4(ii) (a) prohibits assignment of grazing lands and applications shall not be entertained except by Tahsildar under Para-35; and unassessed lands not being reserved alone can be assigned under Para-33 on transferring the unassessed land to the head of “assessed” land by following the procedure. He also invited the circular of Collector dated 18-04-2002 wherein the Collector, Chittoor stated that water bodies, water courses kunta Poramboke and foreshores of such porambokes cannot be assigned and revenue officials are not competent even to re-classify such land and accordingly directed all revenue officials to follow the High Court orders and also instructions issued in Circular-III in office reference No.E5/19192/99 dated 19-06-2000 with regard to eviction of tanks and restoration of all tanks.

In support of his submission he placed reliance on the following judgments:

1. ***MADDU TATHA v. UTTARAVILLI NAGAMANI***

2. ***BANDI NAGARAJU v. GARLADINNE MANDAL, ANANTAPUR DISTRICT***

In ***MADDU TATHA v. UTTARAVILLI NAGAMANI*** (1 supra) this Court held in the light of prohibition to assign the Poramboke tank beds by the assigning officer and if an assignment is contrary to the said prohibition, the same would become void and unenforceable and basing upon the void and unenforceable assignment the possessee will not be entitled to injunction to maintain the possession.

The reliance placed by the learned counsel for the petitioners on the above judgment is misplaced to the facts of the present case.

Since the entire controversy is centers round BSO-15 Para-4 (ii) (a), it is appropriate to notice the same hereunder:

> "4. Lands that may be assigned and that may not be assigned:--
>
> i. x x xx
>
> ii. The assignment of the following classes of lands is prohibited:---
>
> a. Poramboke (tank-beds, fore-shore of tank-beds cattle stands, grazing lands and reserved lands (reserved for depressed class members or for any public purpose, such as schools, play grounds, hospitals, maternity centers, reading rooms, extension of house-sites, panchayat purposes town sites and lands in the proximity thereof."

Notes 1 and 2 of the above Para reads as under:

> "**Note.1—** Whenever applications for assignment of lands classified as porambokes are received, it should be examined whether the lands are really required for the purpose for which they were originally set apart, or for any other purpose, and if they are not so required, steps should be taken to convert them to ayan and assign them.
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> **Note.2—** Lands reserved or required for various public or communal purposes such as pasturage village site, Abkari etc., should be drawn up by the Tahsildar for each village and after approval by the Revenue Divisional Officer, such lands should be entered in a prohibitory book. Lands so included in the prohibitory order book shall not be assignable, except under the orders of the Collector."

It is fallacy to contend that once the lands are prohibited under Para-4 (ii) (a) of BSO-15, the same cannot be assigned, as per Notes 1 and 2, referred to above, only prescribed procedure to be followed. Transferring the lands which are prohibited from assignment, namely, lands which are classified as Poramboke and set set-apart as such whether required to be continued for the said purpose and if they do not require the purpose for reservation, steps have to be taken to convert them to ayan and the lands so included in the POB shall not be assignable except under the orders of the Collector.

A reading of the Notes 1 and 2 clearly disclose that once the lands which are set apart in Prohibitory Order Book for the communal purposes are not assignable except de-reserving for the said purpose and deleting it from POB and convert them to ayan under the orders of the Collector. Whereas under Para-35 of BSO-15 whenever an application is received and the land is forbidden under the rule, the Tahsildar can reject the application. If he thinks that the land can be granted, he should publish the proposal to assign it for occupation in the village in the manner prescribed, and where a panchayat has been established for the village under the Andhra Pradesh Gram Panchayat Act, 1964 he shall also give intimation of the proposal to such Panchayat Board and should then obtain the orders from the Collector to transfer it to the head of "assessed" land. If the Collector refused to sanction the transfer, the Tahsildar should reject the application and inform the applicant accordingly. The Collector, if he sanctions the transfer, should fix the assessment to be change, which will ordinarily be the assessment on similar land in the neighbourhood, but he can exercise his discretion in the matter.

The file produced by the Government Pleader does not indicate that the Tahsildar has informed the same to the Gram Panchayat concerned apart from villagers before withdrawing the grazing land from POB and making available for assignment to SC poor families and the Collector has followed the necessary procedure before deletion of the same basing upon the report submitted by the M.R.O. When a specific assertion is made in the affidavit in para-10 that the impugned order has not been given effect to and the extents have not been deleted from the POB till today, the same has not been controvered by the respondents.

In view of the same, the impugned proceedings are set aside for not following the mandatory requirements, referred to above, and it is open for the M.R.O. to follow the necessary procedure, namely, publish the proposal to assign it for occupation in the village and giving intimation to the Gram Panchayat and submit his proposal to the Collector and on submitting the said proposal Collector shall pass orders accordingly.

With directions as above, the writ petition is allowed. No costs.

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A.GOPAL REDDY,J

06-03-2006

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